

13, 1994], and after consideration of the report of the Comptroller General required by subsection (a), the Federal Acquisition Regulatory Council (established by section 25 of the Office of Federal Procurement Policy Act [41 U.S.C. 421]) may make a determination that a class or classes of contracts in amounts greater than the micro-purchase threshold and not greater than the simplified acquisition threshold are not suitable for acquisition through a system with full FACNET capability. Any such determination shall be submitted to the congressional committees referred to in subsection (d). Each determination under this subsection shall take effect 60 days after the date on which it is submitted to those committees.

“(c) **APPLICABILITY OF DETERMINATIONS.**—Each determination under subsection (b) shall apply for purposes of determining eligible contracts under section 30A(e) of the Office of Federal Procurement Policy Act, as added by section 9001 [41 U.S.C. 426a(e)].

“(d) **COMMITTEES.**—The report required by subsection (a), and any determination made under subsection (b), shall be submitted to the Committees on Governmental Affairs, on Armed Services, and on Small Business of the Senate and the Committees on Government Operations [now Government Reform and Oversight], on Armed Services [now National Security], and on Small Business of the House of Representatives.

“(e) **DEFINITIONS.**—In this section:

“(1) The term ‘simplified acquisition threshold’ has the meaning provided by section 4(11) of the Office of Federal Procurement Policy Act [41 U.S.C. 403(11)], as amended by section 4001.

“(2) The term ‘micro-purchase threshold’ has the meaning provided by section 32(g) of the Office of Federal Procurement Policy Act [41 U.S.C. 428(g)], as added by section 4301.

“(3) The term ‘full FACNET capability’ has the meaning described in section 30A(d) of the Office of Federal Procurement Policy Act [41 U.S.C. 426a(d)], as added by section 9001(a).”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 416, 426, 427 of this title; title 15 section 637.

§ 427. Simplified acquisition procedures

(a) Requirement

In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for contracts for acquisition of property and services that are not greater than the simplified acquisition threshold.

(b) Prohibition on dividing purchases

A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified acquisition procedures required by subsection (a) of this section.

(c) Promotion of competition required

In using simplified acquisition procedures, the head of an executive agency shall promote competition to the maximum extent practicable.

(d) Consideration of offers timely received

The simplified acquisition procedures contained in the Federal Acquisition Regulation shall include a requirement that a contracting officer consider each responsive offer timely received from an eligible offeror.

(e) Special rules for use of simplified acquisition procedures

(1) Effect of interim FACNET capability

The simplified acquisition procedures provided in the Federal Acquisition Regulation pursuant to this section may not be used by a procuring activity of an agency for contracts in amounts greater than \$50,000 and not greater than the simplified acquisition threshold until a certification has been made pursuant to section 426a(a)(1) of this title that the procuring activity has implemented an interim FACNET capability.

(2) Effect of full FACNET capability

(A)(i) In the case of a procuring activity described in clause (ii), the simplified acquisition procedures provided in the Federal Acquisition Regulation pursuant to this section may be used by the activity for contracts in amounts greater than \$50,000 and not greater than the simplified acquisition threshold.

(ii) Clause (i) applies to any procuring activity—

(I) that has not certified, pursuant to section 426a(a)(1) of this title, that it has implemented interim FACNET capability; and

(II) that is in an agency that has excluded the procuring activity from the agency's full FACNET certification under section 426a(a)(2) of this title on the basis that implementation of full FACNET capability would not be cost effective or practicable in that activity.

(B) The simplified acquisition procedures provided in the Federal Acquisition Regulation pursuant to this section may not be used by an agency after December 31, 1999, for contracts in amounts greater than \$50,000 and not greater than the simplified acquisition threshold until a certification has been made pursuant to section 426a(a)(2) of this title that the agency has implemented a full FACNET capability.

(f) Interim reporting rule

Until October 1, 1999, procuring activities shall continue to report under section 417(d) of this title procurement awards with a dollar value of at least \$25,000, but less than \$100,000, in conformity with the procedures for the reporting of a contract award greater than \$25,000 that were in effect on October 1, 1992.

(Pub. L. 93-400, §31, as added Pub. L. 103-355, title IV, §4201(a), Oct. 13, 1994, 108 Stat. 3342.)

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 252b of this title; title 10 section 2302b.

§ 428. Procedures applicable to purchases below micro-purchase threshold

(a) Requirements

(1) The head of each executive agency shall ensure that procuring activities of that agency, in

awarding a contract with a price exceeding the micro-purchase threshold, comply with the requirements of section 637(a) of title 15, section 2323 of title 10, and section 7102 of the Federal Acquisition Streamlining Act of 1994.

(2) The authority under part 13.106(a)(1) of the Federal Acquisition Regulation (48 C.F.R. 13.106(a)(1)), as in effect on November 18, 1993, to make purchases without securing competitive quotations does not apply to any purchases with a price exceeding the micro-purchase threshold.

(b) Exclusion for micro-purchases

A purchase by an executive agency with an anticipated value of the micro-purchase threshold or less is not subject to section 644(j) of title 15 and the Buy American Act (41 U.S.C. 10a–10c).

(c) Applicability of certain provisions

For purposes of section 423 of this title, an officer or employee of an executive agency, or a member of the Armed Forces of the United States, shall not be considered a procurement official if—

(1) the contracting authority of the officer, employee, or member does not exceed \$2,500; and

(2) the head of the contracting activity concerned (or a designee of the head of the contracting activity concerned) determines that the duties of the position of that officer, employee, or member are such that it is¹ unlikely that the officer, employee, or member will be required to conduct procurements in a total amount greater than \$20,000 in any 12-month period.

(d) Purchases without competitive quotations

A purchase not greater than \$2,500 may be made without obtaining competitive quotations if the contracting officer determines that the price for the purchase is reasonable.

(e) Equitable distribution

Purchases not greater than \$2,500 shall be distributed equitably among qualified suppliers.

(f) Implementation through FAR

This section shall be implemented through the Federal Acquisition Regulation.

(g) Micro-purchase threshold defined

For purposes of this section, the micro-purchase threshold is the amount of \$2,500.

(Pub. L. 93–400, §32, as added Pub. L. 103–355, title IV, §4301(a), Oct. 13, 1994, 108 Stat. 3346.)

REFERENCES IN TEXT

Section 7102 of the Federal Acquisition Streamlining Act of 1994, referred to in subsec. (a)(1), is section 7102 of Pub. L. 103–355, which is set out as a note under section 644 of Title 15, Commerce and Trade.

The Buy American Act, referred to in subsec. (b), is title III of act Mar. 3, 1933, ch. 212, 47 Stat. 1520, as amended, which enacted sections 10a, 10b, 10b–1, and 10c of this title, and enacted provisions set out as notes under section 10c of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10a of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 13, 1994, and to be implemented in Federal Acquisition Regulation not later than 60

days after Oct. 13, 1994, see section 4301(c) of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 10a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10a of this title.

§ 429. List of laws inapplicable to contracts not greater than simplified acquisition threshold in Federal Acquisition Regulation

(a) List of inapplicable provisions of law

(1) The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. A provision of law that is properly included on the list pursuant to paragraph (2) may not be construed as applicable to such contracts or subcontracts (as the case may be) by an executive agency. Nothing in this section shall be construed to render inapplicable to contracts and subcontracts in amounts not greater than the simplified acquisition threshold any provision of law that is not included on such list.

(2) A provision of law described in subsection (b) of this section that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of law required by paragraph (1), unless the Federal Acquisition Regulatory Council makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts or subcontracts in amounts not greater than the simplified acquisition threshold from the applicability of the provision.

(b) Covered law

A provision of law referred to in subsection (a)(2) of this section is any provision of law that, as determined by the Federal Acquisition Regulatory Council, sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, except for a provision of law that—

(1) provides for criminal or civil penalties; or

(2) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(c) Petition

In the event that a provision of law described in subsection (b) of this section is not included on the list of inapplicable provisions of law as required by subsection (a) of this section, and no written determination has been made by the Federal Acquisition Regulatory Council pursuant to subsection (a)(2) of this section, a person may petition the Administrator for Federal Procurement Policy to take appropriate action. The Administrator shall revise the Federal Acquisition Regulation to include the provision on the list of inapplicable provisions of law unless the Federal Acquisition Regulatory Council makes a determination pursuant to subsection (a)(2) of this section within 60 days after the date on which the petition is received.

(Pub. L. 93–400, §33, as added Pub. L. 103–355, title IV, §4101, Oct. 13, 1994, 108 Stat. 3339.)

¹ So in original. Probably should be “it is”.